Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
2018 Quadrennial Review –	)	MB Docket No. 18-349
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	
	)	

JOINT REPLY COMMENTS

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TABLE OF CONTENTS

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Connoisseur Media, LLC, Townsquare Media, Inc., Mid-West Family Broadcasting, Midwest Communications, Inc., the Frandsen family stations, Cherry Creek Media, Neuhoff Media, Eagle Communications, Inc., Patrick Communications, LLC, and Legend Communications, LLC (collectively, the "Joint Commenters"),[1] by their attorneys, hereby submit these reply comments in the above-referenced proceeding.[2]

I. INTRODUCTION AND SUMMARY

In their Record Refresh Comments, the Joint Commenters provided statistical data, research studies, and other empirical evidence to demonstrate that the media marketplace has continued to evolve since May 2019. Indeed, it is more apparent now than ever before that the decades-old local radio ownership rules are counterproductive to the ability of local radio broadcasters to compete, which has a direct impact on the Commission's goals of preserving

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[1] For a description of the Joint Commenters, *see* Joint Comments of Connoisseur Media, LLC, Townsquare Media, Inc., Mid-West Family Broadcasting, Midwest Communications, Inc., the Frandsen family stations, Cherry Creek Media, Neuhoff Media, Eagle Communications, Inc., Patrick Communications, LLC, and Legend Communications, LLC, MB Docket No. 18-349, at n.1 (filed Sept. 1, 2021) ("Record Refresh Comments").

[2] *See Media Bureau Seeks to Update the Record in the 2018 Quadrennial Regulatory Review*, Public Notice, DA 21-657 (rel. June 4, 2021) ("*Record Refresh PN*").

localism and diversity in communities across America.

There is no disagreement that today's media landscape is totally different than that which existed when the current local radio ownership rules were adopted in 1996. Competitors barely imagined in 1996 now compete with radio for both audience and revenue. While broadcast radio remains an important part of this landscape, the current trends unequivocally demonstrate that global tech companies and other out-of-market digital platforms are substantially eroding both radio's advertising base and its audience share by offering broad and diverse audio products not subject to any regulation. Already, these digital giants take over 50% of the local advertising revenues in every market – revenue that in 1996 supported local media like radio – and their share of the listening audience, especially in younger demographics, is rapidly increasing. Broadcasting needs to be able to challenge the broad offerings made by these digital companies by growing in their local markets. Thus, the Joint Commenters reiterate their 2019 request that the Commission significantly relax the local ownership rules to enable local radio broadcasters to compete effectively with their unregulated adversaries.

The comments submitted in response to the *Record Refresh PN* do not provide any compelling evidence to justify retention of the local radio ownership rule in today's media marketplace. Rather, the comments that were filed to refresh the record – even those that oppose relaxation of the local radio ownership rule – overwhelmingly demonstrate that radio stations face increasingly fierce competition for audience and advertisers in today's digital media marketplace.[3] The comments do not – and cannot –

[3] *See, e.g.*, Supplemental Comments of iHeart Communications, Inc., MB Docket No. 18-349, at 23-24 (filed Sept. 2, 2021) (citing decline in audience listening, number of radio stations on-air, and advertising revenues over the past few years) ("iHeart Comments").

dispute the detailed statistical data and marketplace analysis submitted by the Joint Commenters, the National Association of Broadcasters ("NAB") and others demonstrating the permanent, structural changes in the marketplace since the local radio ownership caps were established over 25 years ago. While some argue that localism and diversity could be negatively affected if greater local ownership is allowed, the stark truth is that neither of these worthy objectives can be achieved in an industry that cannot compete in the marketplace.

As no data has been supplied to refute the conclusions of the Joint Commenters, the decision is clear – the Commission must act quickly to eliminate unnecessary regulations that prevent local radio broadcasters from adapting to, and competing in, the ever-evolving digital world. Failure to provide regulatory relief to allow local broadcasters to achieve scale in their markets will inevitably result in digital media's irretrievable erosion of local radio's audience and revenues, as has been the experience of the newspaper industry. Unless companies like the Joint Commenters can operate competitively viable radio stations free from outdated government regulation, the exact harms that those who oppose relaxation fear will be realized – a media landscape that is severely lacking local content and diverse, local voices.[4]

[4] iHeart argues that the Supreme Court's recent decision "implicitly" rejects the notion that the Commission's evaluation of the local radio ownership rule should be focused on competition. *See* iHeart Comments at 9. As is evidenced by iHeart's characterization of the Court's action as "implicit," the Court does not, in fact, address whether and how the FCC should balance the public interest factors that inform the Commission's review of the ownership rules under Section 202(h). Regardless, the record in this proceeding is replete with evidence demonstrating that the local radio ownership rule is no longer necessary as a result of competition, and that elimination of the rule will not harm localism and diversity. Rather, freeing radio broadcasters from unnecessary regulation will advance these laudable goals by ensuring that local radio can continue to not only exist but to thrive.

II. THE RECORD IN THIS PROCEEDING OVERWHELMINGLY DEMONSTRATES THAT AM AND FM BROADCASTERS FACE UNPRECEDENTED COMPETITION FOR AUDIENCE AND ADVERTISING

Two years ago, the Joint Commenters and others provided compelling empirical evidence to show that, as a result of changes in the marketplace over the past several years, radio faces an increasingly uphill battle to compete against new entrants for both advertisers and audience alike. In their Record Refresh Comments, the Joint Commenters provided updated statistical data and other evidence to show that the trends identified in 2019 have continued along the same trajectories, with consumers and advertisers increasingly viewing alternative media outlets as substitutes for radio. While some comments attempt to minimize concerns about how increased competition has eroded, and will continue to erode, traditional radio's audience and advertising base, these comments do not dispute that today's audio marketplace is far different than it was in 1996, and that radio stations confront more intense competition than ever before.

As was the case two years ago, some comments focus on national audience reach of broadcast radio to support the conclusion that broadcast radio continues as the dominant player in the media marketplace.[5] Even when looking at reach alone, there is no denying that listenership has dropped since 2019, a fact that no commenter disputes. While some comments attempt to downplay this decline in reach as resulting from the COVID-19 pandemic, the fact is that the pandemic only exacerbated the undeniable trends that have been emerging over the past several years. For instance, even though it focuses on the plight of AM stations and urges changes in the ownership rules only for AM, iHeart acknowledges that current data confirms the negative trends identified for the entire radio industry during the original comment period.[6]

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[5] iHeart Comments at 23.

[6] *Id*. at 23-25 (documenting a drop in radio listening and revenues for both AM and FM).

And, as the Joint Commenters have explained, reach does not tell the whole story. It is necessary to look beyond a single statistic to determine whether radio listening is meaningful, what the listening trends have been, and what these trends signify for the future. When this is done, it is clear that time spent listening to radio has continued to decrease significantly, as more and more consumers, particularly younger demographics, turn to out-of-market digital platforms and audio entertainment services, most controlled by the largest companies in America. Indeed, the record in this proceeding unequivocally demonstrates that these digital platforms – and not broadcast radio – are now dominant players in the audio marketplace. Yet, it is only local radio that is shackled by decades old government regulation that inhibits its ability to compete in today's media marketplace.

Certain comments argue that radio and digital do not compete in the same market for advertising, asserting that broadcast and digital reach consumers in very different ways.[7] While many parties make these statements, none back them up with any empirical research. That some advertisers may have separate budgets for digital and broadcast spends does not mean that broadcasters are not competing against online behemoths like Google and Facebook. Rather, evidence in the record clearly reflects that advertisers routinely shift dollars away from broadcast stations towards pureplay Internet companies and other new entrants.[8] This is evident as a matter of common sense too – no one can dispute that local radio advertising over time has been

[7] Comments of the National Association of Black Owned Broadcasters, Inc., MB Docket No. 18-349, at 14-15 (filed Sept. 1, 2021).

[8] As noted in the studies provided by the Joint Commenters from Borrell and Associates, which for decades has researched the local advertising marketplace, most local businesses view broadcast and digital advertising as interchangeable and are constantly shifting advertising dollars from one to the other looking for an appropriate mix. *See* Record Refresh Comments at Exhibit B (study by Borrell Associates documenting the commanding position of digital advertising giants in today's local advertising marketplace).

decreasing while digital advertising has been increasing substantially. To say that these changes are happening independently, without digital being viewed as a substitute for traditional local media like radio, simply ignores the evidence. This trend has been developing for several years now and is expected to continue such that, by 2023, out-of-market Internet companies will control nearly two-thirds of the local advertising market.[9] The competitive landscape today is "so overly lopsided" that local radio stations "cannot readily compete in the marketplace."[10]

In its comments, iHeart repeats its argument that the relevant product market for analyzing the applicability of the local radio ownership rule should be limited solely to the local radio market.[11] Such an approach is underinclusive and short-sighted, however, as the record here makes clear that radio broadcasters compete in a vastly more extensive marketplace for both audience and advertising – the "fundamental barometer[s]" of competition.[12] Indeed, research provided by the Joint Commenters and others demonstrates a clear correlation between the loss of audience and advertising in radio and the growth of the same in digital. The growth of digital advertising, which exploded over the past year, has forced local broadcasters "into direct competition with . . . internet services that can provide targeted, national, and even global,

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[9] Record Refresh Comments at 25. *See also*, Supplemental Comments of Nexstar Media Inc., MB Docket No. 18-349, at 7-8 (filed Sept. 2, 2021) (discussing growth of digital advertising in recent years and explaining that, in just two years, digital media is projected to surpass traditional media's national advertising share) ("Nexstar Comments").

[10] Comments of Press Communications, LLC, MB Docket No. 18-349, at 2 (filed Aug. 30, 2021). *See also*, Comments of the R Street Institute, MB Docket No. 18-349, at 2-3 (filed Sept. 2, 2021) (providing data demonstrating the imbalanced distribution of advertising revenues among digital and traditional media outlets).

[11] iHeart Comments at 9.

[12] iHeart Comments at 25; Reply Comments of the NAB, MB Docket Nos. 18-349 and 17-289, at 34 (filed May 29, 2019).

outreach."[13]

Ironically, at the same time it argues that recent antitrust actions support its position that local radio is its own product market, iHeart's comments recognize that both AM and FM radio stations are suffering from increased competition.[14] For example, iHeart points to the number of terrestrial stations that have gone off-air since the end of 2018 and provides detailed data demonstrating a decline in both listenership and advertising over the past few years.[15] In so doing, iHeart is, in effect, conceding the impact of digital competitors on local broadcasters generally, even though it focuses its efforts on deregulation of AM stations alone. But these trends are affecting the entire radio industry. In light of the realities of today's marketplace, the Commission should not wait to reform the broadcast ownership rules until radio broadcasting has declined to unsustainable levels and it is too late to help the industry. Changes must be made now in order to preserve *all* radio as an important local voice in the media marketplace.[16]

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[13] Comments of Heritage Broadcasting of Michigan, MB Docket No. 18-349, at 7 (filed Sept. 2, 2021) ("Heritage Comments") (stating that local broadcasters must sell digital advertising at 10-15 times the amount of broadcast sales to achieve the same margins as they would for broadcast revenues).

[14] The Commission should reject arguments that it must rely on product market definitions in recent antitrust complaints in the context of this quadrennial review proceeding. How the Department of Justice seeks to enforce the antitrust law has no bearing the Commission's mandate under Section 202(h) to evaluate whether the local radio ownership rule remains necessary to protect competition. And, regardless of how the DOJ defines the relevant product market, the evidence in the record overwhelmingly demonstrates that local radio stations have, in fact, suffered a loss of advertisers and listeners alike as companies like Google and Facebook have introduced audio products.

[15] iHeart Comments at 23.

[16] To the extent it is applicable to the Commission's quadrennial review, relaxation of the local radio ownership rule as proposed by the Joint Commenters is wholly consistent with the President's "Executive Order on Promoting Competition in the American Economy" because, as the record clearly reflects, radio stations are in an ever-increasing precarious position when it comes to competing with out-of-market audio platforms. Exec. Order No. 14036, 86 Fed. Reg. 36,987 (July 14, 2021). iHeart's attempts to argue that proposals to relax only the AM radio ownership rules are more consistent with the Executive Order in an effort to further its own interests conveniently ignores the challenges faced by FM and AM stations alike, regardless of market size.

III. RELAXATION OF THE LOCAL RADIO OWNERSHIP RULE WILL ENHANCE – NOT HARM – LOCALISM, AND IS ESSENTIAL TO MAINTAINING DIVERSITY AND ATTRACTING NEW RADIO INVESTMENT

Some opponents of change to the local radio rule argue that relaxation of the rule will "jeopardize a wide[] variety of sources of information and viewpoint at the local level" and could lead to job loss.[17] For companies like the Joint Commenters, this statement could not be further from the truth. The fact that the current ownership rules harm localism has been well-substantiated. The NAB, for example, cites a BIA study demonstrating that the additional scale realized through an acquisition not only facilitated an expansion of local news, but also minimized the impact of economic downturns as compared to markets where stations operated on a stand-alone basis.[18]

Indeed, the record in this proceeding contains ample evidence demonstrating that radio broadcasters struggle to maintain their current level of local service as digital media eats away at their audiences and revenues.[19] Radio stations today, especially those in small and mid-size

[17] Comments from The Screen Actors Guild – American Federation of Television and Radio Artists (SAG-AFTRA), MB Docket No. 18-349, *et al*., at 3 (filed Sept. 2, 2021).

[18] Comments of The National Association of Broadcasters, MB Docket No. 18-349, at 35-36 (filed Sept. 2, 2021) ("NAB Comments"). Although the BIA study focused on television stations, the conclusions are equally applicable to radio stations. Record Refresh Comments at n.133 (explaining how local radio stations could increase news and other local content if the local radio ownership rule did not prohibit broadcasters from acquiring same-market stations).

[19] *See*, *e.g.*, *supra* at nn.9 & 10; iHeart Comments at 23-25; Kent S. Collins, *The Value of Cross Ownership to Improving Local News in Small Markets*, attached to Heritage Comments (noting that "the rapid development of digital information services" has "sucked advertising revenues from traditional local news providers"); NAB Comments at 64-84 (discussing that recent events and marketplace developments have accelerated the shift towards digital media consumption and exacerbated financial challenges faced by local broadcasters). *See also*, Comments of NCTA – The Internet & Television Association, MB Docket No. 18-349, at 1 (filed Apr. 29, 2019) (stating the "media marketplace has seen dramatic changes since the Commission began conducting its media ownership reviews two decades ago"); Comments of iHeart Communications, Inc., MB Docket No. 18-349, at 3 (filed Apr. 29, 2019) (stating "[i]t is beyond dispute that the audio ecosystem in which free, over-the-air, local radio broadcasting currently operates and competes has changed dramatically since the 1996 Act"); Comments of Curtis Media Group, Inc., MB Docket No. 18-349, at 2 (filed Apr. 29, 2019); Comments of Urban One, Inc., MB Docket No. 18-349, at 4-5 (filed Apr. 29, 2019); Comments of The Multicultural Media, Telecom and Internet Council,

markets, simply do not earn the revenues necessary to support the "high capital and operating costs associated with local news operations", which has led to a crisis in local journalism.[20] Just as Congress is actively working to provide legislative solutions to ensure communities have access to strong local content from trusted sources, the Commission should provide regulatory relief to enable local broadcasters to leverage the economies of scale necessary to the success of local news.[21]

The argument that relaxation of the ownership rules will harm ownership diversity also ignores the reality of today's marketplace.[22] For radio to attract new entrants into ownership, it must be an industry that will provide a strong economic return to entice investment.[23] If an industry promises declining revenues as global giants suck revenue out of the market, new entrants (and their investors) will turn to other industries to invest their time and financial resources.[24] One need only look at the newspaper industry for proof. As the newspaper industry

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MB Docket No. 18-349, at 5 (filed Apr. 29, 2019) (acknowledging increased advertising competition from Facebook and Google) ("MMTC Comments").

[20] NAB Comments at 20.

[21] The fact that Congress has intervened to support local media in order to restore the balance to the media landscape has not gone unnoticed. *See*, *e.g.*, Nexstar Comments at 8-9. iHeart agrees that local radio plays an essential role in ensuring that communities have access to reliable information from trusted sources, particularly in this age of disinformation and misinformation, and acknowledges the importance of government regulation in achieving this result. *See* iHeart Comments at 13-14. While iHeart focuses on AM radio, the proposed legislation is much broader, and seeks to ensure the ongoing viability of local media outlets as vital to our country.

[22] *See, e.g.*, Further Comments of the Multicultural Media, Telecom and Internet Council, MB Docket No. 18-349, at 2 (filed Aug. 31, 2021) (citing MMTC Comments at 5, which argued that "new voices" are the answer to competition from Facebook and Google but ignoring that new entrants will be unable to develop viable businesses in the absence of a strong radio industry that can only exist if broadcasters have access to the tools necessary to compete against Internet goliaths).

[23] *See* NAB Comments at 10 (explaining that "the primary cause of low levels of new entry and minority/female ownership in broadcasting is lack of access to capital, which structural ownership rules do not address").

[24] *Id.* (stating that heavy-handed regulation is a "major disincentive" to investment).

succumbed to increased competition from digital media giants, the price to acquire existing papers fell and many local papers simply went out of business. There was not a rush of new entrants to enter a business that could not return a profit. We are already seeing radio stations that cannot be sold as new entrants are unwilling to enter the industry.[25] To attract new entrants, the radio industry must be a strong one that is ready and able to compete in today's media marketplace. In light of the current and ongoing trends, industry cannot carry on subject to the same ownership restrictions as it has over the past 25 years. Ownership changes must be made now to attract the investment necessary to provide a robust local over-the-air radio industry for the long term.

IV. CONCLUSION

The comments filed in response to the *Record Refresh PN* demonstrate that the trends evident in the competitive environment in which local broadcasters operate have continued since the Commission first sought comment in this quadrennial review proceeding. Today, all radio stations – FM and AM alike – face escalating competition for listeners and advertisers from the nation's largest companies and other out-of-market platforms. The recent COVID-19 pandemic has only accelerated trends that have long been developing. The statistical data and empirical evidence submitted by commenters show that there is no reason to expect any meaningful reversal of the negative trends for the local radio industry that pre-dated the pandemic. Indeed, in light of the clear and unmistakable shift in audio listening and advertising from terrestrial radio to digital platforms, the writing on the wall is clear: if the FCC does not act now to level the playing field by removing archaic ownership restrictions that burden local broadcasters, but

[25] *See* Record Refresh Comments at Exhibit C (declaration of experienced media broker Lawrence Patrick).

not their formidable competitors, over-the-air radio stations will simply be unable to maintain the current level of service, a result that is clearly contrary to the public interest. Accordingly, the Joint Commenters urge the FCC to act now to preserve local media by relaxing the local radio ownership rules and unleashing local radio companies to compete with their unregulated digital competitors.

Respectfully submitted,

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